

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

PHILLIP M. HEWSON,

*Plaintiff,*

v.

PEPPERIDGE FARM, INC.,

*Defendant.*

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Civil Action No.: 5:18-cv-00445

**DEFENDANT PEPPERIDGE FARM, INCORPORATED'S NOTICE OF REMOVAL**

Defendant Pepperidge Farm, Incorporated ("Pepperidge Farm"), by and through its undersigned counsel, hereby provides notice pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 of the removal of the above-captioned case from the District Court for the 150th Judicial District of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division. The grounds for removal are as follows:

**BACKGROUND**

1. Plaintiff Phillip M. Hewson filed this action on April 5, 2018 in the District Court for the 150th Judicial District for Bexar County, Texas, and the case was docketed as Cause No. 2018-CI-06272. A true and correct copy of the Original Petition is attached hereto as Exhibit A.

2. The District Clerk for Bexar County, Texas issued a Citation to Pepperidge Farm on April 6, 2018. A true and correct copy of the Citation is attached hereto as Exhibit B.

3. Pepperidge Farm was served with a copy of the Citation and Original Petition on April 11, 2018. A true and correct copy of the Service of Process Transmittal is attached hereto as Exhibit C.

4. No other pleadings or papers have been filed in this matter or served upon Pepperidge Farm. Accordingly, 28 U.S.C. § 1446(a) is satisfied.

5. Pursuant to 28 U.S.C. § 1446(d), concurrent with the filing of this Notice, Pepperidge Farm is filing a written notice of this removal with the Clerk of the District Court of the 150th Judicial District for Bexar County, Texas. This Notice of Removal and the Notice of Filing Notice of Removal are being served upon Plaintiff's counsel as required by 28 U.S.C. § 1446(d).

### **REMOVAL IS TIMELY**

6. Pursuant to 28 U.S.C. § 1446(b), "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." *See also Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 at 347-48 (1999) (holding that 30-day period under Section 1446(b) is triggered by formal service of the complaint and "not by mere receipt of the complaint unattended by any formal service").

7. Pepperidge Farm received a copy of the Original Petition on April 11, 2018. Accordingly, removal is timely.

### **DIVERSITY JURISDICTION EXISTS**

8. Pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

9. Under 28 U.S.C. § 1332, original jurisdiction exists on the basis of diversity where (1) the amount in controversy exceeds \$75,000, exclusive of interest and costs, and (2) the

suit is between citizens of different states. *See also Flagg v. Stryker Corp.*, 819 F.3d 132, 135 (5th Cir. 2016) (“The federal courts may exercise diversity jurisdiction over a civil action between citizens of different States if the amount in controversy exceeds \$75,000.”).

**A. Complete Diversity of Citizenship Exists.**

10. Pepperidge Farm is organized under the laws of Connecticut and has its principal place of business in Connecticut. *See* Original Pet. at III (“[Pepperidge Farm] is a Connecticut Corporation.”); Ex. A to Original Pet. “Definitions” (“[Pepperidge Farm is] a Connecticut corporation having its principal office in Norwalk, Connecticut.”); *See* 28 U.S.C. § 1332(c) (“[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and the State or foreign State where it has its principal place of business.”).

11. Plaintiff alleges that he resides in Bexar County, Texas and that he has operated and continues to operate a distributorship in Texas. *See* Original Pet. at III, V; *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996) (individual is a citizen of the state in which he is domiciled).

12. Accordingly, complete diversity exists between Plaintiff and Pepperidge Farm.

**B. Amount in Controversy is Satisfied.**

13. The amount in controversy in a case where federal jurisdiction is based on diversity of citizenship must exceed \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

14. The Original Petition states that “Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00.” Orig. Pet. at I. Accordingly, the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1446(c)(2) (“If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy.”).

**VENUE IS PROPER**

15. The United States District Court for the Western District of Texas, San Antonio Division, includes the county in which this action is now pending. Thus, this Court is the proper venue for the action pursuant to 28 U.S.C. § 1441(a).

**CONCLUSION**

WHEREFORE, Notice is given that this action is removed from the 150th Judicial District of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division.

Dated: May 11, 2018

Respectfully submitted,

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/s/ T. Cullen Wallace

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*Attorneys for Defendant*

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on the following counsel via certified mail, return receipt requested, on May 11, 2018.

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